

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 1999-217-C - ORDER NO. 1999-396

JUNE 8, 1999

IN RE: Petition of Bluffton Telephone Company, Inc. ) ORDER GRANTING  
and Hargray Telephone Company, Inc. to ) VOLUNTARY LIMITED  
Preserve their Rural Exemption as Permitted ) WAIVER  
under 47 U.S.C. Section 25(F)(1). )

In response to notifications by Resort Hospitality Services, Ltd, d/b/a RHS Communications, Inc. (RHS) to Bluffton Telephone Company, Inc. (Bluffton) and Hargray Telephone Company, Inc.(Hargray) to negotiate for appropriate wholesale rates, terms, and conditions, Bluffton and Hargray petitioned the Public Service Commission of South Carolina (the Commission) to conduct the required inquiry under Section 251 (f)(1)(B) of the Telecommunications Act of 1996. Bluffton and Hargray stated that they believe that negotiating and entering in to the requested agreement at this time would be unduly economical burdensome and would be inconsistent with universal service principles and policies. By Order No. 1999-326, dated May 12, 1999, the Commission found that an inquiry under Section 251 (f)(1)(B) is required and ordered that this matter be set for hearing.

Subsequent to the issuance of Order No. 1999-326, Hargray and Bluffton gave notice to this Commission of their voluntary limited waiver of the protections of the rural telephone company exemption provided for in Section 251(f)(1) of the Telecommunications Act of 1996. According to Hargray and Bluffton, the rural

exemption applies to those obligations of incumbent local exchange companies contained in Section 251 (c ) of the Act. Hargray and Bluffton have evidenced their intention to waive the protection of the rural exemption only as it relates to the duties imposed by Section 251(c )(4) of the Act. This section imposes upon incumbent local exchange carriers the duty: (A) to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers; and (B) not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of such telecommunications service, except that a State commission may, consistent with regulations prescribed by the Federal Communications Commission... prohibit a reseller that obtains at wholesale rates a telecommunications service that is available at retail only to a category of subscribers from offering such service to a different category of subscribers.

Hargray and Bluffton have evidenced their intention to enter into negotiations with telecommunications carriers seeking to purchase Hargray's and Bluffton's retail telecommunications service at wholesale rates for resale. Hargray and Bluffton have indicated that they do not intend to waive any rights that they may have with respect to any other services, including but not limited to unbundled access and interconnection for the purpose of providing facilities-based competitive services.

Hargray and Bluffton have requested that the Commission acknowledge that it is appropriate at this time for Hargray and Bluffton to voluntarily waive any rights that they may have to a rural exemption with respect to the resale duties of Section 251(c )(4) only. Hargray and Bluffton believe that Commission approval of this request will eliminate the

need for the scheduled hearing on Hargray's and Bluffton's rural exemption. The hearing was scheduled in response to a bona fide request from Resort Hospitality Services, d/b/a RHS Communications, Inc. RHS Communications requested only that Hargray and Bluffton make their retail services available for resale at wholesale rates, according to Hargray and Bluffton.

RHS filed a return to the Notice of Waiver. RHS states that the Telecommunications Act of 1996 does not contain provision for a "partial" rural exemption for local exchange carriers, and that the Commission has no authority to terminate only a part of the exemption. According to RHS, once it has made a bona fide request for "interconnection, services, or network elements," Section 251(f)(1)(B) of the Act is triggered, and the Commission must terminate the exemption unless Hargray and Bluffton can demonstrate their entitlement to continued exemption.

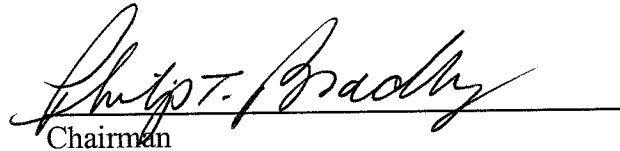
The Commission acknowledges that it is appropriate for Hargray Telephone Company, Inc. and Bluffton Telephone Company, Inc. to voluntarily waive a portion of their rural exemptions. A waiver is the intentional relinquishment of a known right. See Moss Theatres, Inc. v. Turner, 616 P.2d 1127, 1129 (N.M. 1980). It is well settled that "a right or privilege given by statute may be waived or surrendered, in whole or in part, by the party to whom or for whose benefit it is given." Sartin v. Hudson, 143 S.W.2d 817 (Tex. 1940). Furthermore, RHS Communications has no standing to object to this limited waiver. RHS Communications has requested only the ability to purchase Hargray's and Bluffton's retail telecommunications services at wholesale rates for resale, and both

Hargray and Bluffton have announced their intention to negotiate in good faith with RHS Communications on wholesale discount rates.

In light of the fact that Hargray and Bluffton have waived those portions of their rural exemptions that relate to the services RHS Communications has requested, there is no need for the Commission to determine at this time whether or not to terminate Hargray's and Bluffton's rural exemptions under Section 251(f)(1) of the Telecommunications Act of 1996. The hearing that was scheduled for June 16, 1999 in this matter is cancelled, and the matter is dismissed. Accordingly, the Petition to Intervene filed by the Consumer Advocate for the State of South Carolina is moot.

This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

  
Chairman

ATTEST:

  
Executive Director

(SEAL)